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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,861	01/30/2004	Mark M. Levy	26180	3919
7590		12/14/2007		
Dr. Mark Levy 34 Etzion Street RaAnana, 43563 ISRAEL			EXAMINER LAM, ANN Y	
			ART UNIT	PAPER NUMBER
			1641	
			MAIL DATE	DELIVERY MODE
			12/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/766,861

Applicant(s)

LEVY, MARK M.

Examiner

Ann Y. Lam

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-19, 28-32 and 39-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 10, 12, 39, 43-46, 48, 49 and 51-57 is/are rejected.
- 7) ☒ Claim(s) 6-7, 9, 11, 13-14, 17-19, 28-32, 40-42, 47, 50 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8, 10, 12, 39, 43-46, 48, 49, 51-57 are rejected under 35

U.S.C. 102(e) as being anticipated by Stoltz, WO 02/102243 A1.

As to claims 1-5, Stoltz discloses a sampling device for obtaining samples of internal body substances in the digestive system wherein the device is a swallowable capsule which allows a sample of the body substance to enter the capsule through an inlet opening. The capsule comprises an inner chamber disposed to preserve a substantial negative pressure when the inlet opening is sealed, and admits flow of body substance into an inner chamber as long as there is a pressure difference between the inner chamber and the external environment of the capsule (see abstract.) The capsule includes a plug (20), which upon being dissolved, a suction effect is generated by the pressure difference between the external environment of the capsule and an inner

chamber (5) in which a vacuum or substantial underpressure prevails, allowing fluid flow through a resilient blocking member (12) and into chamber (5) (page 7, lines 3-15.)

The structures (4 and 6) forming the capsule (2) (page 5, lines 6-8) is equivalent to Applicant's claimed confining mechanism comprising a outer housing, and the resilient blocking member (12) is equivalent to the claimed sink mechanism within the housing (see fig. 2) (Applicants do not specify the sink material in the rejected claims such that it is distinguished over Stoltz.) The material entering the capsule is equivalent to the claimed constituent-of-interest.

As to claim 8, the interior of capsule (2) is equivalent to the claimed solid phase to which the sink material (12) is attached (Applicant does not specify the structural elements of the solid phase.)

As to claim 10, the sink material (12) is water non-soluble (since it does not dissolve in water.)

As to claim 12, Stoltz discloses that element (12) (equivalent to Applicant's claimed sink material) is made of an elastic and resilient rubbery material (which is a polymer).

As to claims 39, 43, 44, the plug (20) and the capsule wall (3) defining the inner chamber (5) in which there is a vacuum or underpressure (page 6, lines 17-18 and page 7, lines 3-6) provides for mixing of fluid (upon dissolution of the plug and influx of fluid into the vacuum chamber (5), the movement of fluid providing for mixing) and thus is a mixing mechanism as claimed by Applicant, and is also a flow generating mechanism

and pump (because it acts as a vacuum pump, suctioning fluid into the vacuum chamber 5.)

As to claim 45, the capsule's structures (4 and 6) (equivalent to Applicant's confining mechanism comprising an outer housing) comprises a housing (see fig. 1).

As to claim 46, 48 and 49, the housing (4 and 6) comprises a bioresistant material (since it does not dissolve in the body) and is designed and constructed so as to prevent damage to the sink mechanism by constituents of the gastrointestinal tract (since the sink mechanism 12 is not damaged during use) and prevents damage to the gastrointestinal tract by the sink mechanism (page 3, lines 1-16.)

As to claim 51, the housing can expand and/or contract since it is relatively thin and is made of thermoplastic material (page 5, lines 6-7.)

As to claims 52-55, the material of the device is inherently capable of being detected by magnetic resonance imaging or ultrasound imaging.

As to claim 56, there is a protective cover made of a biodegradable material, to degrade only when arriving to a predetermined location of said gastrointestinal tract (see page 10, lines 3-5, disclosing that the capsule can be further provided with an additional outer, covering film of gelatin which is dissolved in the digestive system.)

As to claim 57, the device is capable of permitting flowing into it the materials recited by Applicants.

Allowable Subject Matter

Claims 6, 7, 9, 11, 13, 14, 17-19, 28-32, 40-42, 47 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's response of September 24, 2007 has been considered. Applicant traverses Examiner's position in the previous Office action that the material forming the capsule is considered to be the sink mechanism, quoting the specification to show that the capsule is distinct from the sink mechanism. Applicant states that in order to expedite allowance Applicant has amended the claims to clarify that the sink mechanism is not the confining mechanism.


While descriptions in the detailed specification is generally not read into the claims, Examiner finds that the last Office action did not address the confining mechanism recited in the original claims. The present Office action, with new grounds of rejection although using the same prior art reference as in the previous Office action, points out what structure is equivalent to Applicant's sink mechanism and what structure is equivalent to the confining mechanism, and thus renders moot Applicant's argument. This Office action is made nonfinal in order to give Applicant an opportunity to respond.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is 571-272-0822. The examiner can normally be reached on Mon.-Fri. 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Ann Y. Lam
Primary Patent Examiner

Index of Claims



Application/Control No.

10/766,861

Examiner

Ann Y. Lam

Applicant(s)/Patent under
Reexamination

LEVY, MARK M.

Art Unit

1641

✓	Rejected
=	Allowed

—	(Through numeral) Cancelled
÷	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim	Date
Final	Original
1	✓ 12/8/07
2	✓
3	✓
4	✓
5	✓
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9	✓
10	✓
11	✓
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Claim	Date
Final	Original
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